

Robert J. Pecora, SBN 106167
Attorney at Law
7855 Ivanhoe Street, Suite 400
La Jolla, California 92037
Tel. (858) 454-4014
Fax (858) 454-3548

Attorney for Plaintiff: TAK ASANUMA

FILED
12 APR 13 AM 11:08
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TAK ASANUMA,
Plaintiff

vs.

UNITED STATES CENSUS BUREAU,
UNITED STATES DEPARTMENT OF
COMMERCE; and ANNETTE VAIPULU; and
DOES 1-100,
Defendants,

CASE NO.: 12CV0908AJBWMC
COMPLAINT FOR DAMAGES

A. PARTIES

Plaintiff, TAK ASANUMA alleges:

1. Plaintiff, TAK ASANUMA is and at all times herein mentioned was a resident of the State of California and a citizen of the United States of America.
2. Defendant, ANNETTE VAIPULU is a natural person who is, and at all times mentioned in this Complaint was, a resident of San Diego County, California and within the United States of America.
3. Defendant, UNITED STATES CENSUS BUREAU, UNITED STATES DEPARTMENT OF COMMERCE is and at all times mentioned in this Complaint, was a governmental entity within the United States of America and the employer of Defendants, BORIS OSVALDO AHUMADA, and ANNETTE VAIPULU.

COMPLAINT

- 1 4. Defendants, DOES 1-100 and ANNETTE VAIPULU are and were at all times mentioned in this
2 Complaint, employees of the Defendant, UNITED STATES CENSUS BUREAU, UNITED
3 STATES DEPARTMENT OF COMMERCE acting within the course and scope of their
4 employment with the Defendant, UNITED STATES CENSUS BUREAU, UNITED STATES
5 DEPARTMENT OF COMMERCE, as census takers at the time of the incident herein.
- 6 5. Defendant, ANNETTE VAIPULU, is and at all times mentioned in this Complaint was the back
7 seat passenger, who opened the driver's side door of the 1992 Toyota 4 Runner automobile,
8 California License No. 3APX951 with the consent, permission, and knowledge of the
9 Defendant, DOES 1-100 at the time of the incident herein.
- 10 6. Plaintiff, TAK ASANUMA is ignorant of the true names and capacities of defendants sued
11 herein as DOES 1-100, inclusive, and therefore sues these defendants by such fictitious names.
12 Plaintiff, TAK ASANUMA will amend this Complaint to allege their true names and capacities
13 when ascertained. Plaintiff, TAK ASANUMA is informed and believes and thereon alleges that
14 each of the fictitiously named defendants is negligently responsible in some manner for the
15 occurrences alleged in this Complaint and Plaintiff, TAK ASANUMA's injuries as alleged were
16 proximately caused by Defendants' negligence.

17 **B. JURISDICTION AND VENUE**

- 18 7. This action is brought under the Federal Tort Claims Act, 28 United States Code Sections
19 1346(b) and 2671 -2680, which provides that District courts have exclusive jurisdiction over
20 actions against the United States for damages for injury caused by the negligence of a
21 government employee and tort claims procedures.
- 22 8. The negligence alleged herein occurred in the Southern District of California in San Diego
23 County.

24 **C. EXHAUSTION OF REMEDIES**

- 25 9. Plaintiff, TAK ASANUMA timely filed a claim Standard Form 95 with the Defendant, UNITED
26 STATES CENSUS BUREAU, UNITED STATES DEPARTMENT OF COMMERCE as prescribed
27 by the Department of Justice pursuant to 28 CFR 14.2 on or about October 27, 2010. More than 6
28 months have passed since the presentation of the claim and the Claim has thus been rejected. An
29 exhaustion of remedies has thus occurred.

30
31 //

D. COUNT ONE-NEGLIGENCE

10. At all times herein mentioned in this complaint, the 2100 block of Abbott Street in the City of San Diego, State of California, was an open and public street and highway.

11. At all times herein mentioned, Plaintiff, TAK ASANUMA was riding his bicycle on the 2100 block of Abbott Street in the City of San Diego, State of California and was in the bicycle lane and/or to the far right side of Abbott Street.

12. On or about May 5th, 2010 the Defendants, UNITED STATES CENSUS BUREAU, UNITED STATES DEPARTMENT OF COMMERCE; BORIS OSVALDO AHUMADA; ANNETTE VAIPULU; and DOES 1-100, and each of them, did so negligently entrust, operate, own, maintain, repair, manage and control said automobile so as to cause the same to strike Plaintiff, TAK ASANUMA and his bicycle and proximately causing serious injuries to Plaintiff, TAK ASANUMA.

13. As a proximate result of this negligence, carelessness, recklessness, of the Defendants and each of them, and the striking of the Plaintiff, TAK ASANUMA, Plaintiff, TAK ASANUMA was injured in his health, strength, and activity, sustained injury to his body and shock and injury to his nervous system and person, and sustained the following injuries, among others:

1. A closed head injury;
2. An intracranial hemorrhage; and
3. An occipital condyle fracture.

all of which injuries have caused and continue to cause the Plaintiff, TAK ASANUMA great mental, physical, and nervous pain and suffering. These injuries will result in permanent disability and injury to Plaintiff, TAK ASANUMA, all to his general damage.

14. As a proximate result of the negligence, carelessness, recklessness, and/or unlawfulness of defendants, and each of them, Plaintiff, TAK ASANUMA necessarily employed physicians and surgeons for medical examination, treatment, and care of these injuries, and incurred medical expenses for the following:

1. San Diego Medical Services (ambulance): \$1,286.38
2. UCSD Medical Center: \$74,655.40

15. As a proximate result of the negligence, carelessness, recklessness, and/or unlawfulness of Defendants, and each of them, plaintiff necessarily employed physicians and surgeons for medical examination, treatment, and care of these injuries, and incurred medical expenses and

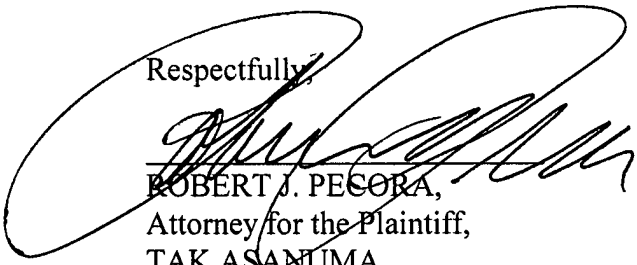
1 incidental expenses and will have to incur additional like expenses in the future, all in amounts
2 presently unknown to him. Plaintiff therefore asks leave of court to prove that amount at the
3 time of trial.

4 16. Immediately prior to and at the time of the collision plaintiff's bicycle was in good mechanical
5 condition. As a proximate result of the negligence and carelessness of the defendants, and each
6 of them, Plaintiff, TAK ASANUMA's bicycle was damaged.

7
8 WHEREFORE, plaintiff prays judgment against defendants, and each of them, as follows:

- 9 1. For compensatory damages according to proof;
10 2. For general damages according to proof;
11 3. For medical and related expenses according to proof;
12 4. For repairs to plaintiff's bicycle in the sum of \$300.00
13 5. For costs of suit herein incurred; and
14 6. For such other and further relief as the court may deem proper.

15
16 Respectfully,

17 
18 ROBERT J. PECORA,
19 Attorney for the Plaintiff,
20 TAK ASANUMA

21 VERIFICATION

22 I, TAK ASANUMA, am the plaintiff in the above-entitled action. I have read the foregoing
23 complaint and know the contents thereof. The same is true of my own knowledge, except as to the
24 matters which are therein alleged on information and belief, and as to those matters, I believe it to be
25 true.
26

27
28 I declare under the penalty of perjury under the laws of the State of California that the
29 foregoing is true and correct.

30 Dated: 4/12/12

31 
32 TAK ASANUMA

33 COMPLAINT

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☐ 3 Federal Question (U.S. Government Not a Party)☒ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State

PTF DEF
(JMD)

Incorporated or Principal Place of Business In This State

PTF DEF
☐ 4 ☐ 4

Citizen of Another State

☐ 2 ☐ 2

Incorporated and Principal Place of Business In Another State

☐ 5 ☐ 5

Citizen or Subject of a Foreign Country

☐ 3 ☐ 3

Foreign Nation

☐ 6 ☐ 6

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

☐ 110 Insurance☐ 120 Marine☐ 130 Miller Act☐ 140 Negotiable Instrument☐ 150 Recovery of Overpayment & Enforcement of Judgment☐ 151 Medicare Act☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)☐ 153 Recovery of Overpayment of Veteran's Benefits☐ 160 Stockholders' Suits☐ 190 Other Contract☐ 195 Contract Product Liability☐ 196 Franchise

PERSONAL INJURY

☐ 310 Airplane☐ 315 Airplane Product Liability☐ 320 Assault, Libel & Slander☐ 330 Federal Employers' Liability☐ 340 Marine☐ 345 Marine Product Liability☒ 350 Motor Vehicle☐ 355 Motor Vehicle Product Liability☐ 360 Other Personal Injury

PERSONAL INJURY

☐ 362 Personal Injury - Med. Malpractice☐ 365 Personal Injury - Product Liability☐ 368 Asbestos Personal Injury Product Liability☐ 370 Other Fraud☐ 371 Truth in Lending☐ 380 Other Personal Property Damage☐ 385 Property Damage Product Liability

PERSONAL PROPERTY

☐ 610 Agriculture☐ 620 Other Food & Drug☐ 625 Drug Related Seizure of Property 21 USC 881☐ 630 Liquor Laws☐ 640 R.R. & Truck☐ 650 Airline Regs.☐ 660 Occupational Safety/Health☐ 690 Other

LABOR/EMPLOYMENT

☐ 710 Fair Labor Standards Act☐ 720 Labor/Mgmt. Relations☐ 730 Labor/Mgmt. Reporting & Disclosure Act☐ 740 Railway Labor Act☐ 790 Other Labor Litigation☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION

☐ 462 Naturalization Application☐ 463 Habeas Corpus - Alien Detainee☐ 465 Other Immigration Actions☐ 422 Appeal 28 USC 158☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS

☐ 820 Copyrights☐ 830 Patent☐ 840 Trademark

TAXES

☐ 861 HIA (1395f)☐ 862 Black Lung (923)☐ 863 DIWC/DIWW (405(g))☐ 864 SSID Title XVI☐ 865 RSI (405(g))

FEDERAL TAX SUITS

☐ 870 Taxes (U.S. Plaintiff or Defendant)☐ 871 IRS—Third Party 26 USC 7609☐ 400 State Reapportionment☐ 410 Antitrust☐ 430 Banks and Banking☐ 450 Commerce☐ 460 Deportation☐ 470 Racketeer Influenced and Corrupt Organizations☐ 480 Consumer Credit☐ 490 Cable/Sat TV☐ 810 Selective Service☐ 850 Securities/Commodities/Exchange☐ 875 Customer Challenge 12 USC 3410☐ 890 Other Statutory Actions☐ 891 Agricultural Acts☐ 892 Economic Stabilization Act☐ 893 Environmental Matters☐ 894 Energy Allocation Act☐ 895 Freedom of Information Act☐ 900 Appeal of Fee Determination Under Equal Access to Justice☐ 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from another district (specify)☐ 6 Multidistrict Litigation☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

28:1391 - Personal Injury (JMD)

Brief description of cause: Motor vehicle vs. bicycle personal injury accident

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint.

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS037567
Cashier ID: mbain
Transaction Date: 04/13/2012
Payer Name: ROBERT PECORA

CIVIL FILING FEE
For: ASANUMA V US CENSUS BUREAU
Case/Party: D-CAS-3-12-CV-000908-001
Amount: \$350.00

CHECK
Check/Money Order Num: 11958
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$53.00
charged for any returned check.